

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KAREN T and ROBERT T, SR., for
themselves and their minor daughter, N.T.,

Plaintiffs,

v.

ERIN DEVENEY, Interim Commissioner of the
DEPARTMENT OF CHILDREN & FAMILIES,
and MARTHA COAKLEY, the Attorney General
of the Commonwealth of Massachusetts,

Defendants.

Civil Action No. 14-12307

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Karen T (the “Mother”) and Robert T, Sr. (the “Father”),¹ for themselves and their daughter, N.T. (the “Daughter”), through their attorneys, make this complaint against Erin Deveney, as Interim Commissioner of the Department of Children and Families, and Martha Coakley, as the Attorney General of the Commonwealth of Massachusetts, and allege as follows:

NATURE OF THE ACTION

1. The Massachusetts Department of Children & Families (“DCF”) has violated and continues to violate the fundamental rights of parents, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, to choose which healthcare providers will examine and treat their children. DCF has unconstitutionally expanded the concept of “medical child abuse,” without sufficient and justifiable standards, to intrude on sincere, vigilant

¹ To protect the privacy rights of their minor child, the parents use herein only their last initial. DCF and the Attorney General have separately been provided with the full name of each plaintiff outside of the public record.

and loving efforts by parents who face competing diagnoses and different views on the medical condition of their children. The Mother and Father have received multiple diagnoses for their now 13 year-old Daughter. They have received an assessment of Pediatric Autoimmune Neuropsychiatric Disorder Associated with Streptococcal Infection ("PANDAS") from qualified providers. At the inpatient psychiatric unit at Children's Hospital Boston known as "Bader 5," however, providers initially maintained a diagnosis of an undifferentiated somatoform disorder. DCF has interfered with and improperly chilled the efforts of the Mother and Father to obtain clarity and the most appropriate care for their Daughter.

2. Despite prior diagnoses of physical causes for her condition, after the Daughter went to Children's Hospital Boston, certain healthcare providers associated with Bader 5 almost immediately concluded that the Daughter suffered from an undifferentiated somatic disorder rather than a physical cause that other qualified healthcare professionals believed still called for medical treatment. In or about June 2012, these Bader 5 healthcare providers threatened the Mother and Father with the loss of parental rights if they did not abandon other treatment in favor of inpatient psychiatric treatment. The hasty diagnosis and threats by the Bader 5 healthcare providers prevented the Mother, Father and Daughter from seeking an additional medical opinion at the time.

3. As a general matter, healthcare providers at major institutions, such as those at Bader 5, possess undue influence with DCF, which lacks sufficient, competent and independent medical resources. By labeling parents as involved in "medical child abuse" or "doctor shopping," the Bader 5 healthcare providers have enlisted DCF to prevent further medical opinions that can challenge the viewpoints of Bader 5's providers. In the process, parents are deprived of one of the most fundamental constitutional rights, the right to direct the care and

upbringing of their children. As a result of DCF's routine involvement at the behest of Bader 5 healthcare providers, parents in the position of the Mother and Father face substantial risks when they seek to place their trust in other healthcare providers rather than those at Bader 5 or similarly influential institutions.

4. The Bader 5 healthcare providers enlisted DCF against the Mother and Father, threatening them with a loss of custody. Faced with a potential loss of custody rights unless they acceded to the demands by Bader 5 healthcare providers, in or about June 2012, the Father signed paperwork, while under duress, that admitted their Daughter into Bader 5 for inpatient psychiatric treatment. Only when the Father agreed to commit their Daughter to Bader 5 did the Bader 5 healthcare providers cause DCF to refrain from taking steps to remove custody from the parents.

5. The Daughter's condition deteriorated significantly while at Bader 5. Her basic needs were not being met at Bader 5. At times the Daughter was forcefully restrained by staff at Bader 5, blocked from the outside world, and deprived of time outside for a substantial time period. In addition, the Daughter's reactions to her confinement at Bader 5 led at times to her staying in a padded "safety" room that lacked windows. The conditions at Bader 5 caused the Daughter substantial setbacks.

6. DCF's actions and statements continue to threaten the Daughter's treatment. The Bader 5 healthcare providers were unable to help the Daughter and, instead, caused the Daughter substantial harm. She has returned to her family and improved modestly, but still needs further treatment. Yet DCF's actions and statements have suggested that the Mother and Father will face adverse government action against them if they seek out additional medical treatments and opinions. Specifically, DCF has targeted the Mother and Father for their continued belief that

their Daughter's difficulties may result from medical causes, including PANDAS, and their continued consultation with multiple doctors and specialists at different facilities. DCF has chilled the Mother's and the Father's ability to seek additional medical assessments and opinions that could help their Daughter.

7. DCF's actions against the Mother and Father are part of its pattern of unconstitutional activity against parents. For example, in a recent high-profile case, also at the behest of Bader 5 providers, DCF stripped Connecticut parents of custody over their young daughter, placing the girl into Bader 5 inpatient treatment inconsistent with the medical opinions of the girl's regular treating physician at Tuft's Medical Center. In that case, Bader 5 providers made an almost immediate diagnosis of somatoform disorder contrary to a long-term diagnosis of mitochondrial disorder. Essentially DCF blindly followed Bader 5's recommendation when initiating proceedings against the Connecticut parents. In other cases, Bader 5 and DCF have taken actions that collectively resulted in inpatient commitment at Bader 5 when healthcare providers elsewhere had reached opinions that the children at issue suffered conditions potentially or likely stemming from physical causes. In addition to PANDAS, diagnoses of mitochondrial disorder, Lyme disease and other conditions have led to pertinent medical debates or controversy about whether a somatoform disorder existed.

8. DCF is not equipped to resolve these medical debates, lacks identifiable standards by which to override parents' wishes, and cannot constitutionally target parents for their choices among qualified professionals.

9. In response to a Freedom of Information Act Request, DCF responded, substantially late, by letter dated May 20, 2014, in which DCF admitted that it lacked any policy or regulation that relates to and/or reflects the concept of "medical child abuse."

10. Based on these events and the totality of circumstances, the Mother, Father and Daughter are entitled to a declaration that DCF cannot, consistent with the Due Process Clause of the United States Constitution, base any government action against the Mother and Father on their continued belief that their Daughter's difficulties are due to physical or medical causes, including PANDAS, or because they continue to consult with and seek care for their Daughter from multiple doctors or specialists at different facilities. The Mother, Father and Daughter are also entitled to an award of attorneys' fees and costs in their favor, pursuant to 42 U.S.C. § 1988.

PARTIES

11. Plaintiff Karen T (the "Mother") is a citizen of Massachusetts who resides in Walpole, and is the natural mother of the Daughter, the young girl whose medical care is at issue in this case.

12. Plaintiff Robert T, Sr. (the "Father"), is a citizen of Massachusetts who resides with the Mother in Walpole, and is the natural father of the Daughter

13. The Daughter is a 13 year-old girl who resides in Walpole with the Father and Mother and two siblings. The Daughter has been assessed by multiple qualified healthcare providers as likely suffering from PANDAS, Auto-Immune Encephalitis, or a combination of similar physical causes for, among other things, an inability now to walk or speak. She presently receives care from providers at Massachusetts General Hospital in Boston, Massachusetts.

14. Defendant Deveney is the Interim Commissioner of DCF responsible for directing the agency to remain within its authorized and constitutional powers. Under MGL c. 119 § 51B, DCF is empowered to investigate and take action only with respect to allegations of "child abuse or neglect." Under MGL c. 119 § 37, DCF is required to "make rules and regulations concerning the administration of its duties." DCF has not established any rules or regulations concerning

“medical child abuse” or “doctor shopping,” but has taken actions against parents, such as the Mother and Father, for consulting with and seeking care for their children from multiple doctors or specialists at different facilities. Defendant Deveney and DCF reside in the District of Massachusetts.

15. Defendant Coakley is the Attorney General for the Commonwealth of Massachusetts. Her office is a creature of statute empowered by MGL c. 12 § 3 “to appear for the commonwealth and for state departments, officers and commissions in all suits and other civil proceedings in which the commonwealth is a party or interested, or in which the official acts and doings of said departments, officers and commissions are called in question” Defendant Coakley and the Office of the Attorney General reside in the District of Massachusetts.

JURISDICTION AND VENUE

16. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because it poses federal questions under the United States Constitution.

17. Venue is appropriate within this District, pursuant to 28 U.S.C. § 1391(b), because all of the parties reside and can be found in the District of Massachusetts, and a substantial part, if not the entirety, of the events and omissions giving rise to the claims occurred in the District of Massachusetts.

The Daughter’s Family Life

18. The Mother and Father were married on February 8, 1997. The Father works with relatives in a financial planning business in Massachusetts. The Mother has worked at certain pertinent times in education in Massachusetts. They have had four children together, two sons and two daughters. The Daughter was born third among them, in May of 2001.

19. In 2000, shortly before his third birthday, the older son was diagnosed with a brain tumor. He and his family experienced numerous rounds of chemotherapy, surgeries, radiation and hospital stays. The family provided all the necessary care and worked cooperatively with providers, but unfortunately and tragically the young boy passed away in 2006.

20. The other son and youngest daughter have experienced no remarkable health conditions and are extremely active and socially involved in educational and extracurricular endeavors.

The Daughter's Illness

21. Throughout her childhood, the Daughter has suffered strep and/or ear infections approximately once or twice per year.

22. The Daughter was in kindergarten when her brother died. After her brother's death, the Daughter and the remainder of her family participated in Camp Sunshine, for grieving families. They also attended the Children's Room, a program for bereaved families on approximately alternating weekends.

23. During kindergarten, the Daughter lagged behind some peers, but was advanced at the typical age to first grade. During that school year, she was given a modified curriculum so that she spent portions of the day in kindergarten classes. She repeated first grade the following year. In or about March 2010, an evaluation reflected that her reading, writing and math skills were within the average range for her grade level. By the time she entered third grade, she was reading fluently with good comprehension.

24. In or about March 2011, the Daughter exhibited decreased school performance. She had trouble recognizing letters and numbers, or to retrieve words. Her fine-motor skills declined, but not her gross motor skills. She exhibited tics and some repetitive active behavior.

25. For months, the Daughter underwent a series of blood tests, electroencephalography (EEG), and Magnetic Resonance Imaging (MRI).

26. In the summer of 2011, the Daughter's cognitive status declined substantially and she was no longer able to read or write. A neurologist prescribed an ADHD medication that did not work and, instead, seemed to cause hyperactivity. Efforts were made through summer education during which the Daughter was assigned a dedicated aid.

27. The problem continued and then got worse. By in or about December 2011, the Daughter exhibited increased anxiety. She ran around the house uncontrollably. The Mother and Father took her to Massachusetts General Hospital for an evaluation. MGH providers initially suspected a conversion disorder or catatonia. They mistakenly administered 100 times the proper dose of Clonidine. They also administered Ativan (Lorazepam), but the Daughter has displayed allergic reactions to that drug. After the overdose at MGH and several doses of Ativan, the Daughter appeared unable to walk or talk. The Daughter received treatment at MGH for approximately one month. While at MGH, providers recommended shock therapy but did not reach a consensus or insist when the Mother and Father expressed serious reservations about subjecting their Daughter to such invasive treatment.

28. The Daughter was transferred to the Franciscan Hospital for Children of McLean Hospital. She was admitted there for approximately 1.5 weeks. While there, the Daughter exhibited tics but improved somewhat as she was no longer catatonic.

29. The Daughter thereafter saw Dr. Denis Bouboulis in Darien, Connecticut. Dr. Bouboulis explored the possibility of, among other things, Lyme disease or PANDAS, the latter of which is often associated with insufficiently treated streptococcal bacteria or “strep” as it is commonly known. Dr. Bouboulis treated the Daughter for strep-related issues and she improved.

30. PANDAS has been compared to rheumatic fever as a strep-related condition. Virtually every child of school age is exposed to strep every year. Many children have reactions to strep so mild that symptoms are mistaken for nothing more than a common cold. A small but substantial percentage of schoolchildren who are carriers are not bothered at all by strep, but can spread the bacteria to susceptible children.

31. Most of the time, children are treated for strep only if they are subjected to a throat swab that captures the culture and creates a positive test result. Penicillin is generally prescribed, but not for relief of symptoms as much as to protect against the small risk that strep could evolve into a more serious condition, such as rheumatic fever or heart disease.

32. In rheumatic fever, antibodies that respond to strep mistakenly attack heart valves, joints, and/or certain parts of the brain. Because proteins on the surface of strep can appear similar to proteins of the heart valve, joints, or brain, essentially an overreaction by the immune system can cause damage to those tissues. A child with rheumatic fever can suffer heart disease, arthritis, and abnormal movements referred to as Sydenham’s Chorea or St. Vitus Dance.

33. Unlike the focus on the heart in rheumatic fever, PANDAS involves the immune system’s attack on the brain. The National Institute of Mental Health (“NIMH”) has defined PANDAS as a diagnosis for a subset of children who have Obsessive Compulsive Disorder (“OCD”) and/or tic disorders, and in whom symptoms have been observed following strep infections such as “Strep throat” and Scarlet Fever. The NIMH has explained: “The children

usually have dramatic, ‘overnight’ onset of symptoms, including motor or vocal tics, obsessions, and/or compulsions.”

34. In addition, the NIMH has reported that, children with PANDAS “may also become moody, irritable or show concerns about separating from parents or loved ones.”

35. According to the NIMH:

In PANDAS, it is believed that something very similar to Sydenham’s Chorea occurs. One part of the brain that is affected in PANDAS is the Basal Ganglia, which is believed to be responsible for movement and behavior. Thus, the antibodies interact with the brain to cause tics and/or OCD, instead of Sydenham Chorea.

36. According to the NIMH, diagnostic criteria for PANDAS can include the following: (1) presence of obsessive-compulsive disorder and/or a tic disorder; (2) the onset of symptoms between the age of 3 and puberty; (3) an episodic course of symptom severity; (4) the association with strep infection; and (5) an association with neurological abnormalities, such as motoric hyperactivity or adventitious movements.

37. Consistent with PANDAS diagnostic criteria, the Daughter has exhibited tics, OCD symptoms, cognitive issues, and separation anxiety.

The Bader 5 Debaele

38. In or about late May 2012, the Mother and Father brought the Daughter to Children’s Hospital Boston because of a refusal to eat because of pain. At first their Daughter was kept on a medical floor at the hospital.

39. The hospital was not able to improve the Daughter’s condition. During the Daughter’s stay there, the Mother discussed with providers and conducted research to identify other healthcare professionals who might be able to help her Daughter.

40. In or about mid-June 2012, the medical providers conferred with the Mother and Father about putting together a discharge plan. Arrangements were made by the hospital, the Mother and the Father for the Daughter's return home.

41. A meeting among providers and the Mother and Father was held on or about Friday, June 22, 2012. Prior to the meeting, the Mother and Father were informed by hospital providers that the meeting was to discuss the discharge of their Daughter.

42. At the meeting, one of the hospital providers informed the Mother and Father that the hospital had obtained a court order to place their Daughter in Bader 5 for purely inpatient psychiatric treatment. The hospital providers threatened to use DCF to remove custody longer term from the Mother and Father if they did not consent to the inpatient treatment at Bader 5.

43. The meeting was conducted by the providers at the hospital in an intimidating manner. There were three guards stationed in the hallway outside the meeting. The hospital's in-house counsel, Ellen Rothstein, would not make herself available to speak with the Mother and Father after the meeting.

44. By on or about Wednesday, June 27, 2012, the Mother and Father learned that a proceeding was underway concerning their Daughter, but no order yet issued contrary to representations the prior week by hospital providers.

45. With the backdrop of a threat that the Mother and Father would lose custody, in a discussion with the Father, Dr. Gary Gosselin of Bader 5 stated in substance and in part that Bader 5 providers as a group had decided that the Daughter needed to be in Bader 5 and, if the Mother or Father did not sign a form admitting the Daughter into the unit, the group would continue with further steps. The Father correctly understood at the time that Dr. Gosselin was threatening the Mother's and Father's custody rights over the Daughter.

46. The threats departed from ordinary and prudent standards of medical and psychiatric care that require informed consent of parents and favor the access of patients and their guardians to second or alternate opinions from qualified providers of their choice.

47. Under duress and without sufficient information to support voluntary or genuine consent, the Father signed admission paperwork.

48. While at Bader 5, the Daughter's condition substantially deteriorated. At times, she was literally banging her head against the wall. She exhibited separation anxiety so extreme that the Bader 5 providers directed the Mother to stay with the Daughter during virtually the entire multi-week stay.

49. When the Mother was away from the Daughter only temporarily, the Daughter experienced symptoms like an uncontrollable tantrum. A relative observed an excessively large group of hospital staff forcibly restrain the Daughter with undue force, leaving substantial bruises on her.

50. For most of the Daughter's stay at Bader 5, she remained confined indoors. At one point, the hospital placed the Daughter in a padded room without any windows. Her time outdoors was limited, often going substantial periods without any time outside in daylight as her condition deteriorated.

51. The Daughter did not receive meaningful or adequate occupational, speech or physical therapy at Bader 5 that was expected.

52. On or about July 13, 2014, having failed to treat the Daughter, Bader 5 finally discharged her for lack of progress and in favor of outpatient treatment.

53. Many of the aggressive and unsuccessful actions taken by Bader 5 appear to stem from arrogance, professional mediocrity, and/or other agendas inconsistent with the best interests

of the patient. The power of Bader 5 providers is exacerbated by their ability to use DCF as a weapon against parents.

54. Unlike the Bader 5 providers who only recently met the Daughter and drew hasty conclusions, the Mother and Father have sought to learn and understand different medical and psychiatric viewpoints out of love for their Daughter that predated her illness and will continue throughout their lives.

DCF's Conflicts and Overreaching

55. As a practical matter, DCF lacks the medical resources to protect against abusive conduct or neglect by providers at institutions like Bader 5.

56. DCF maintains at most only a small Health and Medical Services Team, comprised of a Director of Medical Services, a part time registered nurse, a full time social worker, a few regional nurses, and nurses located at Children's Hospital Boston.

57. DCF routinely seeks assistance from Children's Hospital Boston in its matters.

58. When facing issues concerning a complex medical debate, DCF is neither authorized nor competent to override parental decision-making to choose the qualified healthcare providers on whom to rely.

59. Nevertheless, DCF has developed a practice of taking adverse action against parents that it views as "doctor shopping" in such circumstances. By so doing, DCF has over-expanded any cognizable form of "medical child abuse."

60. On or about June 22, 2012, a report was made to DCF by, upon information and belief, one or more Bader 5 providers or others at the hospital. This report was made on or about the same day that threats were made to the Mother and Father that they would face consequences if they refused to approve the admission of their Daughter to Bader 5.

61. The matter was screened in for an initial assessment by DCF. The subject included a report that the Mother and Father “continue to believe that their daughter’s difficulties are due to medical cause, specifically PANDAS, and continue to consult with multiple doctors and specialists at different facilities.”

62. By on or about July 16, 2012, DCF made an interim finding of no or minimal concern, specifically because the Mother and Father “agreed to comply with Children’s Hospital’s recommendation to allow [the Daughter] to be admitted to Bader 5.”

63. On or about October 9, 2012, another assessment by DCF found continued concern and was critical of the Mother and Father for still believing that the Daughter “is suffering from PANDAS” and for “identifying multiple specialists in and outside of Massachusetts that support her diagnosis and treatment of PANDAS.” DCF notes reflect “varying medical opinions regarding the etiology of [the Daughter]’s illness.”

64. Remarkably, DCF records reflect a “further concern” that when the Daughter’s pediatrician “was not taking on th[e] role,” Mother became “the primary Hub for [the Daughter]’s care.” DCF took steps, including use of a DCF nurse and a consulting child psychiatrist, “to create an action plan to decrease further risk to this child.”

65. Without making any finding of unfitness of the Mother or Father, and without finding any abuse or neglect, DCF imposed conditions on the Mother and Father that they “identify a new pediatrician that would be willing to oversee [the Daughter]’s care,” that two PANDAS specialists Dr. Latimer and Dr. Trifaletti would have to “work[] together in treating” the Daughter, and that the Mother and Father “provide a plan for emergency medical intervention should her condition deteriorate....”

66. DCF closed the case on or about November 19, 2012, having taken these adverse

actions and having imposed these conditions against the Mother and Father, even though DCF also concluded that “there were no indicators that [the Daughter] had been abused or neglected by her parents and there were no protective concerns” concerning the family.

67. A new initial assessment on or about September 4, 2013 focused on a perception that Mother “seems to be completely enmeshed with [the Daughter] and [Father]’s passivity may be allowing his daughter’s medical and psychiatric needs to be inadequately treated.”

68. By on or about September 30, 2013, DCF documented a concern that, with Mother enmeshed in her Daughter’s care, the Daughter “has made some great progress” though might have plateaued. Despite the “great progress,” DCF had focused on a theory that Mother had “doctor shopped to find the doctors that were willing to take out [the Daughter]’s tonsils and put in the G tube” and for prescriptions.

69. Without making any finding of abuse or neglect, DCF took additional actions against and imposed additional conditions on the Mother and the Father.

Other Cases Involving Bader 5 and/or DCF

70. Subject to the influence of Bader 5 providers and the like, DCF is a dangerous weapon against children and families who face complex medical issues over which qualified professionals disagree.

71. DCF has allowed itself to be used by providers who want to override parental decision-making, even at times to prevent parents from seeking second or additional medical opinions. Such activities have been referred to as a “parent-ectomy.”

72. In numerous cases involving diagnoses of PANDAS, mitochondrial disorder, Lyme disease and other matters, Bader 5 providers have used DCF to impose the Bader 5 providers’ treatment plans on the patient instead of allowing parents to weigh opinions and

choose among various qualified healthcare providers.

73. For a highly publicized example, in or about February 2013, Connecticut parents took their young daughter to Children's Hospital Boston with flu-like symptoms. A physician at Tufts Medical Center had recommended an admission to Children's Hospital Boston so that the girl could be seen by a particular gastrointestinal specialist who had recently transferred from Tufts to Children's Hospital Boston. Instead, Bader 5 "diagnosed" her within approximately a single day with somatoform disorder, took over the care of the girl, and reported the parents to DCF for alleged medical child abuse. Within 24 hours, DCF sought custody and a ruling that the girl had to remain at Bader 5 for treatment.

74. Despite a lack of success by Bader 5, the Connecticut girl remained there for about a year. As publicly reported, for most of the girl's confinement at Bader 5, the parents were allowed only supervised visitation on approximately a once-per-week basis and little telephone contact.

75. Under DCF's watch, the young girl deteriorated and lacked in education and other care, blocked from her parents and other family members.

76. Published reports also indicate that, in the last two years, at least 5 cases arose in which a disputed medical diagnosis led to parents either losing custody or being threatened with that extreme measure. DCF's pattern of targeting parents who face competing medical opinions, as well as a need to seek out and choose among multiple qualified healthcare providers, reflects a serious, ongoing risk of DCF's retaliation against them for continuing to seek the most appropriate care for their Daughter. DCF has unfairly and tragically chilled the Mother's and Father's ability to obtain such care for their Daughter.

FOIA Request and Late Response

77. On or about March 11, 2014, a FOIA request was served on DCF for records reflecting its policies or practices concerning “medical child abuse.”

78. On or about May 20, 2014, DCF belatedly responded in substance that no such records exist.

79. Based on DCF’s actions and omissions, the Mother and Father remain at risk for adverse state action if they seek out additional help from qualified healthcare providers or if they make their own choices among opinions and advice from qualified healthcare professionals for the medical care of their Daughter.

COUNT ONE

(Declaration that DCF’s Practices Violate the Due Process Clause)

80. Plaintiffs repeat and incorporate by reference each and every allegation set forth in Paragraphs 1 through 79 as if fully set forth herein.

81. Defendant Deveney is a person acting under color of state law, within the meaning of 42 U.S.C. § 1983, in her supervision of DCF.

82. Defendant Coakley is a person acting under color of state law, within the meaning of 42 U.S.C. § 1983, in her responsibility for all legal matters in the Commonwealth in which the official acts and doings of state departments, officers and commissions are called in question.

83. By the above-described actions and omissions, the Defendants have subjected Plaintiffs to the deprivation of their rights under the Due Process Clause of the United States Constitution.

84. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides heightened protection against government interference with certain fundamental rights and liberty interests, including parents’ fundamental right to make decisions

concerning the care, custody, and control of their children. This fundamental right includes a presumption that fit parents make decisions in the best interests of their children without micromanagement by a government agency.

85. An ongoing, serious and imminent risk exists that, in the absence of declaratory relief, the Mother's and Father's rights and liberty interests under the Due Process Clause will be violated because DCF has prevented and continues to chill their efforts to seek appropriate and effective medical care for their Daughter.

86. DCF has interfered with parental care, custody and control of their children by imposing the views of a portion of healthcare providers on parents and by imposing conditions on parents who are presumptively fit, and who have not engaged in abuse or neglect.

87. An actual controversy exists within the jurisdiction of this Court, within the meaning of 28 U.S.C. § 2201.

88. Plaintiffs are entitled to a declaration that DCF cannot, consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution, base any government action against the Mother and Father on their continued belief that their Daughter's difficulties are due to medical causes, including but not limited to PANDAS or Auto-Immune Encephalitis, or because they continue to consult with and seek care for their Daughter from multiple doctors or specialists at different facilities.

89. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs in their favor under 42 U.S.C. § 1988.

COUNT TWO

(Declaration that DCF Has Exceeded its Statutory Authority by Infringing on Parental Rights Under the Due Process Clause Without a Finding of Abuse or Neglect)

90. Plaintiffs repeat and incorporate by reference each and every allegation set forth in Paragraphs 1 through 89 as if fully set forth herein.

91. Under MGL c. 119 § 51B, DCF is empowered to investigate and take action only with respect to allegations of “child abuse or neglect.”

92. Under MGL c. 119 § 37, DCF is required to “make rules and regulations concerning the administration of its duties.”

93. DCF has not established any rules or regulations concerning “medical child abuse” or “doctor shopping,” but has taken actions against parents, such as the Mother and Father, for consulting with and seeking care for their children from multiple doctors or specialists at different facilities. Defendant Deveney and DCF reside in the District of Massachusetts.

94. DCF has also improperly imposed conditions on parental care, custody and control over their children without any finding of a lack of fitness, abuse or neglect.

95. An actual controversy exists within the jurisdiction of this Court, within the meaning of 28 U.S.C. § 2201.

96. Plaintiffs are entitled to a declaration that DCF has unconstitutionally exceeded its statutory authority by taking adverse actions against parents that infringe on their rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, in the absence of a finding of abuse or neglect defined by adequate and reasonable standards for which parents have received adequate advance notice.

97. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs in their favor under 42 U.S.C. § 1988.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiffs pray for judgment in their favor and against the Defendants and for the following relief:

A. A declaration on Count One that DCF cannot, consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution, base any government action against the Mother and Father on their continued belief that their Daughter's difficulties are due to medical causes, including but not limited to PANDAS, or Auto-Immune Encephalitis, or because they continue to consult with and seek care for their Daughter from multiple doctors or specialists at different facilities;

B. A declaration on Count Two that DCF has unconstitutionally exceeded its statutory authority by taking adverse actions against parents that infringe on their rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, in the absence of a finding of abuse or neglect defined by adequate and reasonable standards for which parents have received adequate notice;

C. The costs of this suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and,

D. Such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

KAREN T and ROBERT T, SR.,

Dated: May 28, 2014

By: /s/ Barry S. Pollack
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CLERK OF COURT

To:

Radmanabhan B.

Date:

June 3, 2014

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Retrieval of files from the archive (<u>\$64.00</u> for 1 st box) (<u>\$39.00</u> for each additional box)	Number of boxes retrieved: 0	\$0.00
Apostilles or exemplification of documents (<u>\$21.00</u> per document)	Number of apostilles or exemplifications:	\$0.00
TOTAL DUE PAID IN FULL <input type="checkbox"/>		\$2.10

If you have any questions I may be reached at _____ or by email at _____.

Sincerely,

C. M. Gawlik

Deputy Clerk

cc: copy file, cashier